

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
On-Briefs May 24, 2000

DAVID PALMER v. TENNESSEE DEPARTMENT OF CORRECTION

**A Direct Appeal from the Chancery Court for Davidson County
No. 97-2591-I The Honorable Irvin H. Kilcrease, Jr., Chancellor**

No. M2000-02351-COA-R3-CV - Filed November 8, 2001

Appellant, prison inmate, filed a “Petition for Judicial Review and/or Petition for a Declaratory Judgment and/or Petition for Common Law Writ of Certiorari,” in the chancery court contesting the denial of relief in his petition for a declaratory order with the Tennessee Department of Correction. The petition for declaratory order challenged his imposed sentence by virtue of subsequent legislation. The trial court dismissed the petition for failure to state a claim upon which relief can be granted and assessed costs against the appellant. This Court affirmed on appeal and assessed the costs of appeal to appellant. Appellant then filed in the trial court a “Motion to Waive Court Costs, Motion to Assert Exemption Rights Under Appellate Precedent,” pursuant to T.C.A. § 26-2-101 et seq. The trial court dismissed the petition and appellant has appealed. We affirm.

Tenn.R.App.P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

David Palmer, Pro Se

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General, Dawn Jordan, Assistant Attorney General, Nashville, For Appellee

OPINION

After a dismissal of appellant’s original petition in chancery court, affirmance by the Court of Appeals, and the Supreme Court’s denial of application for permission to appeal, appellant received a cost bill for the court costs adjudged against him. He then claimed exemptions pursuant to T.C.A. § 26-2-103 (2000), including money in his inmate trust fund, and complied with the provisions of T.C.A. § 26-2-114 (2000) to claim his exemption. By order entered August 16, 2000, the trial court denied appellant’s application for exemption and appellant has appealed.

We perceive the issue on appeal to be whether the appellant, an unsuccessful plaintiff assessed with court costs and litigation tax, may claim the personal property exemption provided for in T.C.A. § 26-2-103 (2000). This statute currently reads:

Personal property selectively exempt from seizure. - Personal property to the aggregate value of four thousand dollars (\$4,000) debtor's equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to the debtor's vocation or pursuit or to the ownership of the debtor's abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of four thousand dollars (\$4,000) debtor's equity interest.

A decision on this issue requires a construction of the statute which is inextricably related to statutes dealing with court costs, responsibility therefor, and collection thereof. Statutes relating to the same subject or sharing a common purpose shall be construed together in order to advance their common purpose. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). The guiding principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding the statute's coverage beyond its intended scope. *Id.; In Re: Conservatorship of Clayton*, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995).

Legislative intent or purpose of the statute is to be ascertained primarily from the natural and ordinary meaning of the language used. *Mooney v. Sneed*, 30 S.W.3d 304 (Tenn. 2000); *Wachovia Bank of North Carolina, N.A. v. Johnson*, 26 S.W.3d 621 (Tenn. Ct. App. 2000). If necessary to a determination of the meaning of a statute, recourse may be had to considerations of public policy and to the established policy of the legislature as evidenced by a general course of legislation. *Cronin v. Howe*, 906 S.W.2d 910 (Tenn. 1995).

With the above principles in mind, we begin our analysis. The subject exemption statute was part of the "Personal Property Owner's Rights and Garnishment Act of 1977," 1978 Tenn. Pub. Acts, ch. 915. This Act made sweeping revisions in the rights and obligations of judgment debtors. While the Act does not specifically define judgment debtor, the general tenor of the Act indicates an intention on the part of the legislature that it applies to judgment debtor defendants. The legislature took great pains to instruct the defendant judgment debtor in the procedure for exercising the exemption and explicitly charged the clerk of the court from which the process is issued with the duty to notify *defendants* of their rights to claim the exemption. These revisions are now codified in T.C.A. § 26-2-114 (2000) and provide:

Procedure for exercising exemption - Notice. - (a) Should a bona fide citizen permanently residing in Tennessee become a judgment

debtor, such debtor must exercise the exemption as provided in § 26-2-103 by filing a list of all the items owned, constructive or actual, which the judgment debtor chooses to declare as exempt, together with the value of each such item. Such listing shall be on oath and filed with the court having jurisdiction. Furthermore, the judgment debtor may modify or amend the listing from time to time as the individual deems necessary.

(b) Such claim for exemption by way of listing, modification or amendment thereto may be filed either before or after the judgment in the case has become final and shall have effect as to any execution issued after the date such claim for exemption is filed. However, subject to such exemption as is further set forth herein, a claim for exemption filed after the judgment has become final will have no effect as to an execution which is issued prior to the date the claim for exemption is filed, and as to such preexisting execution the claim for exemption shall be deemed waived.

(c) It is the duty of the clerk of the court from which process is issued to cause to be stapled to, printed upon or otherwise securely affixed to the warrant, summons or other leading process in the action a typed or printed notice which shall read as follows:

NOTICE

TO THE DEFENDANT OR DEFENDANTS:

Tennessee law provides a four thousand dollar (\$4,000) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family, and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand this exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

Moreover, a part of the same Act, now codified in T.C.A. § 26-2-115 (2000) provides for a type of post-judgment discovery whereby a “judgment creditor” may examine the “judgment debtor” to determine the correctness of his claimed exemptions. From our reading of the 1978 Act, it appears that all provisions are directed to defendant judgment debtors.

From a very early date in the state’s history, the legislature has recognized the need for the payment of litigation costs. The current statute concerning security for costs is T.C.A. § 20-12-120 (Supp. 2000):

20-12-120. Security given by plaintiff. - No leading process shall issue from any court without security being given by the party at whose instance the action is brought, for the successful prosecution of the party’s action, and, in case of failure, for the payment of court costs and taxes which may be awarded against the party, unless in cases and instances specially excepted.

This statute originated from Acts 1787, ch. 19 and evidences the early attention our legislature paid to assuring collection of litigation costs. The legislature was so attentive to this subject that in the same Act requiring security for the costs, the legislature placed liability upon the court clerk for failure to obtain the proper security. Acts 1787, ch. 19 § 3. The present statute from this legislation is found in T.C.A. § 20-12-121 (1994) and reads:

20-12-121. Failure to take security. - Any clerk who neglects to take the security required by § 20-12-120 is liable on the clerk’s official bond to all persons aggrieved thereby.

The pauper’s oath in lieu of security for the costs came into being by virtue of Acts 1821 Acts, ch. 22. Originally, there were exceptions to the type of actions that could be filed under the pauper’s oath, but at the present time the statute applies to any civil action. The object of the statute is to enable any poor person to prosecute an action without giving a cost bond and the purpose of the Act is to place the weak on a level with the strong in a contest for their rights in the courts. *Scott v. Brandon*, 143 S.W. 601 (Tenn. 1911).

The statute authorizing the commencement of a suit on a pauper’s oath excepted several specific causes of action and required the oath of poverty set out in the statute. There were no provisions in the early statutes concerning the obligation of the so-called pauper for payment of the costs. However, T.C.A. § 20-12-133 (1994) has long provided and at present provides:

Judgment against pauper. - On failure, for any reason, to prosecute the action or suit with effect, judgment or decree shall be given against such poor persons, and execution awarded, as in other cases.

The current statute authorizing suit on a pauper's oath is codified as T.C.A. § 20-12-127 (Supp. 2000) and reads:

Pauper's oath. - (a) Any civil action may be commenced by a resident of this state without giving security as required by law for costs and without the payment of litigation taxes due by

(1) Filing the following oath of poverty:

I, _____, do solemnly swear under penalties of perjury, that owing to my poverty, I am not able to bear the expense of the action which I am about to commence, and that I am justly entitled to the relief sought, to the best of my belief; and

(2) Filing an accompanying affidavit of indigency as prescribed by court rule.

(b) The filing of a civil action without paying the costs or taxes or giving security for the costs or taxes does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court.

This statute emanates from the 1995 Tenn. Pub. Acts ch. 242. It is noted that the legislature made two significant changes in the statute. An affidavit of indigency must be filed in addition to the existing oath of poverty. In addition, subsection (b) was added which had not existed in any of the prior statutes. Thus, prior to the effective date of Chapter 242, judgment could be rendered against the pauper plaintiff "and execution awarded, as in other cases." T.C.A. § 20-12-133 (1994). Since this statute has not been repealed, the same effect could be reached today. However, T.C.A. § 20-12-127 (Supp. 2000) by virtue of subsection (b) now provides for a pauper's oath that is expressly conditioned upon the unqualified provision that the responsibility for the costs on the part of the pauper is suspended "until taxed by the court." *See also Fletcher v. State*, 9 S.W.3d 103, 106 (Tenn. 1999) ("[T]he General Assembly has clearly indicated that no person is permanently relieved from payment of court costs or litigation taxes. *See id.* § 20-12-127(b).").

The exemption statute was in existence at the time the legislature passed the 1995 legislation, and the legislature is presumed to know the status of the law on the subject under the consideration at the time it enacts legislation. *Lavin v. Jordon*, 16 S.W.3d 362 (Tenn. 2000). With this knowledge, the legislature nevertheless explicitly provided that the person commencing an action under the pauper's oath is not relieved of liability for the costs, but the courts are merely suspended "until taxed by the court."

We have determined that throughout our history the legislature intended that costs of litigation are to be the responsibility of the person instituting the litigation unless relieved thereof

by the judgment of the court. This intent is manifested again by the provisions of the 1978 legislation, part of which is the subject exemption statute, indicating that the legislation is directed at defendant judgment debtors. Placing this determination with the explicit provision in the pauper's oath statute that merely suspends the payment of costs until "taxed by the court," we reach the conclusion that the legislative intent, as expressed by the ordinary meaning of the language used, is that a person who is allowed to commence a suit without giving security for the costs is not relieved of the obligation to pay the costs by virtue of the exemption statute.

Accordingly, the order of the trial court is affirmed. The case is remanded to the trial court for such further proceedings that may be necessary. Costs of the appeal are assessed against the appellant, David Palmer, for which execution may issue, if necessary.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.